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THE TTAB

Paper No. 21  
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Working Hands Creme Incorporated

Serial No. 75/406,436

Thomas W. Cook for Working Hands Creme Incorporated.

Marc J. Leipzig, Trademark Examining Attorney, Law Office  
115 (Tomas V. Vlcek, Managing Attorney).

Before Hairston, Wendel, and Holtzman, Administrative  
Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Working Hands Creme Incorporated has filed an  
application to register the mark WORKING HANDS CREME and  
design, as shown below, for "medicated skin care  
preparations, namely, cream preparation for treatment of  
skin splits and cracks, abrasions and burns."<sup>1</sup>



<sup>1</sup> Serial No. 75/406,436, filed December 17, 1997, claiming a first use date of August 31, 1994 and a first use in commerce date of September 30, 1995. A disclaimer has been made of the term CREME.

Registration has been finally refused under Section 2(d) on the ground of likelihood of confusion with the mark WORKING HANDS, which is registered for "lotion type hand soap."<sup>2</sup> The refusal has been appealed and the applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We make our determination of likelihood of confusion on the basis of those of the *du Pont*<sup>3</sup> factors which are relevant in view of the evidence of record. Two key considerations in any analysis are the similarity or dissimilarity of the respective marks and the similarity or dissimilarity of the goods or services with which the marks are being used. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ 1209 (TTAB 1999).

Considering first the marks involved here, we are guided by the well established principle that although the marks must be considered in their entirety, there is nothing improper, in appropriate circumstances, in giving more or less weight to a particular portion of a mark. See

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<sup>2</sup> Registration No. 1,577,236, issued January 16, 1990, Section 8 & 15 affidavits accepted and acknowledged, respectively; first renewal.

<sup>3</sup> *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Thus, despite the obvious visual and phonetic differences which exist between the present marks as a whole, we need not necessarily give equal weight to the portions of the marks which create these differences. Both marks contain the same words WORKING HANDS. We agree with the Examining Attorney that this is the dominant component of applicant's mark, as well as registrant's mark in its entirety. The remainder of applicant's mark consists of the descriptive term CREME and the design element arising from the stylized form in which applicant seeks to register its mark.

Although it is acknowledged that descriptive or disclaimed matter cannot be ignored in comparing the marks, it is also a fact that consumers are more likely to rely on the non-descriptive portion of a mark as an indication of source. See Hilson Research Inc. v. Society for Human Resource Management, 27 USPQ2d 1423 (TTAB 1993). The term CREME in applicant's mark is obviously descriptive, if not generic, since it is being used in connection with a "cream" skin preparation.<sup>4</sup> Thus, this portion of the mark

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<sup>4</sup> We take judicial notice of the following dictionary definition:  
crème (or creme) 1. cream  
*Random House Dictionary of the English Language* (2<sup>nd</sup> ed. 1987).

would have little or no source-indicating significance to potential purchasers.

Contrary to applicant's argument, we do not believe that the presence of the additional term CREME in applicant's mark results in different connotations for the marks as a whole. Just as WORKING HANDS CREME connotes a cream for use on hands which have been engaged in physical labor, we consider WORKING HANDS, when used on a lotion type hand soap to connote a soap for hands which have similarly been engaged in physical labor. The mere presence of the name of the goods in applicant's mark does not change the overall inference of the marks, i.e., each is a product designed for "working hands."

Furthermore, it is the distinctive word portion of a mark, rather than any design feature, unless particularly unusual, that is more likely to be remembered and relied upon by purchasers in referring to the goods or services, and thus it is this word portion that will be accorded more weight. See *Ceccato v. Manifattura Lane Gaetano Marzotto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994). It is the word portion, not the minimal design element, which would be used to call for applicant's goods and by which the product would be remembered. Moreover, while applicant may present its mark in a specific design, we note that registrant's

mark has been registered in typed form. Thus, registrant is free to use its mark in any format, including one similar to applicant's particular design or combination of type styles.

Accordingly, we find the overall commercial impressions of applicant's mark WORKING HANDS CREME and registrant's mark WORKING HANDS to be highly similar. See *In re Dixie Restaurants Inc.*, 41 USPQ2d 1531 (Fed. Cir. 1997)(neither background design element nor generic term in applicant's mark THE DELTA CAFE and design sufficient to create different commercial impression from registered mark DELTA).

Turning to the respective goods, we note that as a general principle, the issue of likelihood of confusion must be determined on the basis of the goods as identified in the application and in the cited registration(s). *Canadian Imperial Bank of Commerce v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed.Cir. 1987). If there are no restrictions in the application or registration(s) as to channels of trade, the respective goods must be assumed to travel in all the normal channels of trade for goods of this nature. See *Kangol Ltd. v. KangaROOS U.S.A. Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). Furthermore, it is not necessary that the goods of the applicant and

registrant be similar or even competitive to support a holding of likelihood of confusion. It is sufficient if the respective goods are related in some manner and/or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, because of the similarity of the marks used thereon, give rise to the mistaken belief that they emanate, or are associated with, the same source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993) and the cases cited therein.

Although applicant strongly contends that the conditions surrounding the marketing of the respective goods are dissimilar, we must point out that there are no limitations in the identification of either applicant's medicated skin preparation or registrant's lotion type hand soap as to channels of trade, types of customers or conditions of sale. Thus, we must assume for purposes of determining likelihood of confusion that the goods travel in all the normal channels of trade to all the normal consumers for goods of this nature. Applicant's evidence that its goods are packaged in small quantities while registrant's hand soaps are marketed in much larger quantities to consumers of bulk personal hygiene/cleaning products is to no avail. Neither identification of goods

is limited; both applicant's medicated creams and registrant's lotion type hand soap must be presumed to be items which might be purchased by the ordinary consumer, or, on the other hand, by industrial concerns, for use as hand care preparations.

In an attempt to establish different channels of trade for the goods, applicant has made of record inventory control sheets from two of its distributors, characterized as large distributors of medicated and pharmacy-related products, to demonstrate that suppliers of this nature do not carry registrant's lotion type hand soap. The Examining Attorney has countered this evidence, however, with excerpts from several web pages of suppliers, mostly on the industrial level, showing the offering of both hand soaps and skin creams. Many of these soaps are liquid in form and many of the skin creams are reconditioning or protective creams. Others are not specific as to whether the soaps are liquid or solid in form, the creams medicated or otherwise and thus must be presumed to cover both types.<sup>5</sup> We find this ample evidence that the goods of both applicant and registrant would travel in the same channels

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<sup>5</sup> We note that a thin line exists between "medicated" and other types of creams; applicant's own original identification of goods did not specify that its creams were "medicated."

of trade. The fact that many other types of goods are also offered by these suppliers, as pointed out by applicant, does not obviate the probative value of this evidence with respect to common channels of trade for the present products. The question at this point is simply the availability of the goods to the same purchasers through the same channels of trade, not whether the goods are related to one another or would be presumed to originate from the same source. The Examining Attorney has provided valid evidence that the goods identified by both applicant and registrant would travel in the same channels of trade for industrial hygiene products. Insofar as the ordinary consumer is concerned, we can take judicial notice that both lotion type hand soaps and medicated skin creams are available in the same retail outlets to the same class of purchasers.

We next consider whether a sufficiently viable relationship exists between the goods, such that purchasers, upon encountering a medicated skin cream bearing the mark WORKING HANDS CREME and a lotion type hand soap bearing the mark WORKING HANDS in the same channels of trade would be likely to believe that these goods emanate from the same source. In this connection, the Examining Attorney has made of record copies of over twenty third-



party registrations, which are said to be only a part of the relevant registrations, showing registration of the same mark by a single entity for both soaps and medicated skin creams. While these registrations are admittedly not evidence of use of the marks in commerce, they are sufficient to suggest that these are goods which may be produced by a single entity and be marketed under the same mark. See *In re Albert Trostel & Sons Co.*, *supra*; *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467 (TTAB 1988). Once again, even though many of the registrations do not specify the form of the soaps or the specific functions of the medicated skin creams, we find this sufficient evidence to demonstrate that goods of the present nature are such that, if similar marks are used thereon, purchasers may well assume that the goods emanate from the same source.

Accordingly, in view of the highly similar overall commercial impressions created by the respective marks, the common channels of trade in which the goods travel, and the related nature of the goods, we find a likelihood of confusion.

Decision: The refusal to register under Section 2(d) is affirmed.

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